

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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|------------------------------------|---|----------------------------------|
| ITV DIRECT, INC., |) | Civil Action No. 04-CV-10421-JLT |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| HEALTHY SOLUTIONS, L.L.C., et al., |) | |
| |) | |
| Defendants. |) | |
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| CAPPSEALS, INC., |) | |
| |) | |
| Plaintiff-in-Intervention, |) | |
| |) | |
| v. |) | |
| |) | |
| HEALTHY SOLUTIONS, L.L.C., d/b/a |) | |
| DIRECT BUSINESS CONCEPTS; ITV |) | |
| DIRECT, INC.; and DIRECT |) | |
| FULFILLMENT, LLC, |) | |
| |) | |
| Intervenor-Defendants. |) | |

**PLAINTIFF-IN-INTERVENTION CAPPSEALS INC.'S MOTION TO COMPEL
DEFENDANTS ITV DIRECT, INC. AND DIRECT FULFILLMENT LLC**

Pursuant to Fed. R. Civ. P. 37(a)(2), Plaintiff-in-Intervention Cappseals, Inc.

("Cappseals") hereby respectfully moves this Court to compel Intervenor Defendants ITV Direct, Inc. and Direct Fullfillment, LLC (collectively "ITV") to (i) supplement their initial disclosures regarding claimed damages, including the production of all documents which support their claimed damages, and (ii) produce documents responsive to this Court's May 24, 2004 Order ("Discovery Order"). Cappseals seeks such relief because ITV has refused to produce documents undeniably relevant to Cappseals claims, including a report and its supporting documentation, which report addresses ITV's sale of the nutritional supplements shipped to it by Cappseals and ITV's current inventory of the supplements. This information is directly relevant

to Cappseals claims because ITV has refused to pay Cappseals for the supplements, and has denied Cappseals allegations concerning ITV's receipt and subsequent sale of these goods. Additionally, ITV has not, despite Cappseals request to do so, supplemented its damages disclosure in order to provide the required computation of alleged damages, or produced documentation to support such damages. ITV's refusal to comply with its clear discovery obligations has, and is, hindering Cappseals ability to prepare its case.

WHEREFORE, for the reasons stated above and those more fully set forth in the accompanying memorandum of law, Cappseals respectfully requests that this Court order ITV to (i) produce the Report and all of its supporting documentation, (ii) supplement its damages disclosures to provide an itemization of economic loss, a computation of damages and production of all supporting documentation, and (iii) for any further relief as this Court deems just and proper.

I. REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), Cappseals respectfully requests a hearing on its Motion to Compel, as it believes such hearing may assist the court in resolving this dispute.

Respectfully submitted,
CAPPSEALS, INC.
By its attorney,

/s/ Kristin M. Cataldo
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DATED: January 12, 2005

LOCAL RULE 7.1 AND 37.1 CERTIFICATIONS

I, Kristin M. Cataldo, state that on July 7, 2004 and December 13, 2004, I wrote letters to counsel for ITV requesting the relief sought in this Motion to Compel. Counsel for ITV has not responded in any fashion to the December 13, 2004 correspondence. I additionally placed a call to counsel for ITV on January 5, 2005 in order to discuss the subject matter of my December 13, 2004 letter, but my call has gone unreturned for seven days.

/s/ Kristin M. Cataldo
Kristin M. Cataldo